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Supreme Court, U.S.
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Docket #: 09-372

SUPREME COURT OF THE UNITED STATES

EUGENE FORTE,

Petitioner/Plaintiff

vs.

KNIGHT RIDDER, et al.

Respondents/Defendants.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Eugene Forte
688 Birch Court
Los Banos, CA 93635
In Propria Persona

QUESTIONS PRESENTED FOR REVIEW

A. General Questions

1. What specific acts alleged in the complaint committed by state/county defendants are not protected by immunity? (27 specific questions asked on appeal concerning such to the circuit court were not answered. See next page. Appellant now requests an answer to each of these questions by the U.S. Supreme court.)

2. Were/are state/county defendants entitled to immunity for acts committed by themselves, or by their counsels for them, during/in a lawsuit which would constitute a violation of plaintiff's civil rights, defamation, and obstruction of justice?

3. Were/are state officials required to provide honest services to appellant which would include reporting for investigation crimes or corrupt acts they see evidence of committed by other government officials?

4. Is the U.S. Court of Appeal of the Ninth Circuit required to answer the questions on appeal in the Memorandum Disposition affirming the District Court's ruling "to provide the parties and the district court with a concise explanation of this [their] court's decision," according to their General Orders, Chapter 4.3.a? (Is failure to do so a denial of a parties' due process rights?)

5. How important is it for the courts to follow the federal standards of review? (Should leave to amend been granted or dismissal reviewed as a summary judgment motion thereby allowing discovery prior to ruling?)

B. Specific Questions

1. Is the act of Defendant Judge O'Farrell (hereinafter "O'Farrell") in taking cases for himself (away from another arbitrarily assigned judge), when there is no disqualification on file of the previously assigned judge, constitute an administerial act to which immunity does not apply and which violates the civil right to due process and a fair trial in a fair tribunal?
2. Does his "taking" the case when it is still assigned to another judge give him jurisdiction?
3. Is the basic due process right to a fair and impartial court secondary to the power of the court to punish contempt, i.e., when peremptory challenge was presented prior to citation of contempt and after citation of contempt, O'Farrell acknowledges that he is disqualified, is he violating basic due process rights and does he still have jurisdiction (and thereby judicial immunity) when he presides over the contempt hearing held several hours later and sends appellant directly to jail?
4. Is a judge's conversation with a reporter outside of the courtroom immune from liability?
5. Can a disqualified judge, or one that is personally embroiled with a party, be involved in the assignment of the case involving that party to another judge (under color of law as supervising judge), and again, would that be a administerial function?
6. Are judges required to report misconduct of another judge?
7. As a defendant in the case, is O'Farrell's act of assigning the case of *Forte v. O'Farrell* M72599 twice to himself under color of law as the

Supervisor of the Civil Department and Master Calendar a violation of Forte's right to a fair tribunal?

8. As a defendant in the case, is O'Farrell's interference in instructing Commissioner Baker to tell Forte he had to appear in O'Farrell's court when he was not assigned to the case of *McKee v. Forte* MAR125367, but concurrently a defendant in *Forte v. O'Farrell* M72599, and instructing two bailiffs to escort Forte to his courtroom with the purpose of intimidating Forte protected by immunity?

9. Is O'Farrell's act in directing his counsel of the Attorney General's Office to present false information to media outlets protected by immunity?

10. Is O'Farrell's act in directing clerks of the Monterey Superior Court not to enter a default judgment taken against him in his individual capacity in the case of *Forte v. O'Farrell* M72599 protected by immunity?

11. Are conspiratorial acts committed in O'Farrell's position as Executive member of the Superior Court in order to conceal obstruction of justice and violations of civil rights by himself and other defendants against Forte immune from liability, i.e. his assignment of the investigation of Comm. Rutledge to the DA's Office when he knew they had a conflict?

12. Forte also requests review of the issue of basic due process rights versus the courts' power to insure the orderly administration of justice and punish contempt (without looking at whether contempt was actually committed or not), i.e., does the constitutional right to a fair trial and fair tribunal require that when a judge has

become personally embroiled and when the contempt hearing is not immediately heard (no immediate need), he must step aside and allow another impartial jurist to preside over the contempt hearing?. (*In re Martin*, 71 Cal.App.3d 472, 139 Cal.Rptr. 451 held that (1) where comments of trial judge at hearing on request for rehearing on contempt charges suggested bias and presumption of guilt against petitioner, judge should have recused himself from trying the contempt charge against petitioner at rehearing, and (2) petitioner was denied due process on rehearing by failure of judge to recuse himself and fact that judge in effect became an adversary against petitioner at the rehearing.)

13. When a public official intentionally ignores substantial and reliable evidence revealing a conspiracy of official and judicial corruption, including a violation of civil rights and corruption, does he become a part of that conspiracy when he violates his duty and oath to uphold the law?

14. Is the act of Defendant Chief Justice George, while acting as Chairperson of the Commission on Judicial Performance and of the Assigned Judges Program, in denying Forte his right to access documents, i.e., a written reason for a judge's disqualification according to *CA Rules of Court 6.608* and a copy of a public videotape, an administerial act, when it is done in conspiracy to conceal the corruption and violation of Forte's civil rights?

15. Are the acts of Judge Sillman as Presiding Judge of the Court administerial in nature regarding refusal to provide the written reason

for a judge's disqualification which is required by *CA Rules of Court 6.608* and willfully ignoring evidence of corruption within his court immune from liability?

16. Did Judge Cooper lose his jurisdiction when he ruled that he no longer had jurisdiction over a case because the case was in appeal, and therefore any rulings he made in the case after such determination are not covered by judicial immunity?
17. Does the act of Judge Cooper signing an order granting an anti-slapp motion against Forte when he was already disqualified from the case have immunity for damages caused by such action?
18. Is the act of a Commissioner permanently removing a document, i.e., the notice of change of address, from the court file part of his judicial function and immune from liability?
19. Are the acts of state executives in bringing a motion where they were determined by a judge to have no standing to bring it, and the acts are not acts normally done within the descriptions of their positions, covered by immunity?
20. Is the act of Hammerness in conspiracy with state judge defendant(s) in fabricating false information in the record i.e., a misleading title of an order and an incorrect minute order, and spreading such information that he knows is incorrect to media with the intent to defame, covered by immunity?
21. Does DA Flippo and ADA Spitz have immunity for acts taken as defendants in the case?
22. Is DA Flippo and ADA Spitz immune for removing files from the court involving their own case?

23. Are the acts of Monterey County Counsel McKee in concealing that his clients had obstructed justice in conspiracy with other defendants to bury the harm which had been committed upon Forte, including the violation of his rights, immune from liability?

24. Is the act of McKee in intentionally misusing a TRO, which the Defendant Judge Sillman extended indefinitely as presiding judge of the court (not as a judge sitting in the case) for almost 2 years pending the injunction hearing, (which has to this day over 3 years later never been heard) in conspiracy with other defendants to keep Forte from exposing the violations of his civil rights, immune from liability?

25. When a public official such as a Director of the FBI writes a letter to a Congressman stating that "the FBI had received and reviewed information" when it is not true, and Forte informs him it is not true, and he continues to ignore Forte in order to conceal Forte's allegations of violations of his civil rights by public officials and avoid having to investigate them, is that deliberate act immune from liability?

26. Can the United States of America appear as a defendant when Forte did not sue them and they did not timely file a certificate according to 28 U.S.C. §2679(d)(1) to substitute in? If not, Forte also requests this court to correct the record and omit the United States of America as a defendant. They have not been named as a defendant, nor did they timely substitute into the case.

27. Forte submits that Judge James Ware failed to

include Forte's allegation that the news media defendants' acts in defaming Forte were done in conspiracy to conceal the violations of Forte's civil rights and to deprive Forte of his right to a fair tribunal, and if Forte's SAC was not specific enough in alleging such, Judge James Ware must allow Forte to amend complaint. Would the cause of action of conspiracy to conceal the violations of Forte's civil rights and to deprive Forte of his right to a fair tribunal give the district court jurisdiction over the media defendants regardless of whether the government officials were dismissed from the complaint due to immunity or not?

LIST OF ALL PARTIES

PETITIONER/PLAINTIFF:

Eugene Forte, an individual

DEFENDANTS:

Knight Ridder, a corporation;
The Monterey Herald, a corporation.;
McClatchy Newspapers, a corporation;
California [ex-]Attorney General Bill Lockyer;
California Office of the Attorney General;
Deputy Attorney General Paul Hammerness;
Deputy Attorney General James Schiavenza;
Deputy Attorney General Tyler Pon;
California Governor Arnold Schwarzenegger;
California Chief Justice Ronald George;
Monterey County District Attorney Dean Flippo;
Assistant District Attorney Terry Spitz;
Chief Investigator Sue Stryker;
Monterey County Counsel Charles McKee;
Monterey County Sheriff Michael Kanalakis;
Superior Court Judge Robert O'Farrell;
Superior Court Judge Stephen Sillman;
Assigned Retired Judge Lee Cooper;
Richard Rutledge, an individual;
Jayne Speizer, an individual;
George Sanchez, an individual;
Caroline Garcia, an individual;
Tony Ridder, an individual;
Gordon Yamate, an individual;
Craig Smith, an individual;
FBI Agent James Burrus; and DOES 1—100, incl.

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—District Court for the Northern District of California, San Jose Division, Case No: C06-03948 JW, Docket #136, Filed on April 26, 2007. See Appendix p. A-20.

JUDGMENT

—District Court for the Northern District of California, San Jose Division, Case No: C06-03948 JW, Docket #136, Filed on April 26, 2007. See Appendix p. A-38.

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— U.S. Court of Appeals for the Ninth Circuit, Case No: 07-15983, Filed on January 13, 2009. See Appendix p. A-40.

ORDER

— U.S. Court of Appeals for the Ninth Circuit, Case No: 07-15983, Filed April 13, 2009. See Appendix p.A-43.

STATEMENT OF JURISDICTION

On January 13, 2009, the U.S. Court of Appeal for the Ninth Circuit entered judgment affirming the District Court's ruling. On April 13, 2009, the Ninth Circuit court ordered a denial of appellant's motion for clarification and petition for rehearing. The U.S. Supreme Court has appellate jurisdiction to review this case conferred by *28 USC §1254*.

According to U.S. Supreme Court *Rule 10*, a petition for a writ of certoriari will be granted for compelling reasons, i.e., "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;.... or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

However, this is "neither controlling nor fully measure the court's discretion." *Rule 10*.

Appellant Eugene Forte (hereinafter "Forte") submits that the fact that a circuit court refused to clarify a decision (Appendix p. A-52) that does not answer any of the questions presented on appeal, but instead issues a decision so broad, consisting of 2 pages in response to an approximate 37,000 word briefing, that makes no factual findings on which to base their decision, that it is certainly important enough to have this court answer the question, "Why did the circuit court of appeal fail to issue a decision in accordance with their required by the *General Orders of the Ninth Circuit, Chapter 4.3.a*?"

Forte believes that the answer to this question lies in the logical conclusions that to do so would have

required the circuit court to reverse the district court's ruling, or otherwise issue a decision which would be in direct conflict with *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538.[1]

It would appear, although Forte is NOT making accusations at this point, that the Circuit Court is doing what it can to cover up the acts by other public officials alleged in the complaint.

In this case, the circuit court stated, "While it appears that some of Forte's claims against certain government defendants may fall outside the scope of their immunity....", but it did not enumerate what those claims that fell outside the scope of immunity are. The rest of the memorandum merely stated in general terms that the "district court correctly determined that absolute quasi-judicial immunity bars Forte's claims...." and "the district court properly dismissed Forte's claims relating to actions undertaken in their judicial capacities on the ground that state court judges are entitled to absolute immunity for official actions..." with no findings of fact. Appendix p. A-51.

The U.S. Supreme Court has the power to prescribe rules of procedure to be followed by the lower courts of the United States. See *28 U. S. C. §2071* et seq., and therefore, may establish a rule of procedure for the Ninth Circuit Court to require them to address the questions on appeal.

The answers to the 27 questions on appeal (p. ii of this brief) which were asked of the circuit court are germain to the issues in this case which revolve around the very core of the justice system and our

1. Although *Forrester v. White* determined that absolute judicial immunity apply only to those acts which are adjudicative versus administrative, it did not identify which acts are administrative as applies to this case which appellant now requests this court to specifically delineate via the 27 specific questions provide on page ii.

government. What recourse does a citizen have when the media works in concert with government officials and judicial officers, primarily state actors, to keep public corruption concealed, by diverting attention and pointing the finger at the victim and defaming him? What recourse does that citizen have when the district court then determines all the public officials have immunity without discussing the facts and sends the case against the media back to be heard in front of those same state actors/co-defendants/co-conspirators who are supposedly immune based on lack of jurisdiction?

It would be clear even to a man with a paper head that by doing such, the now dismissed state/ county co-defendants/co-conspirators will be able to continue to conduct a kangaroo court which will result in the media defendants getting off scott free without even the semblance of the appearance of fairness or justice for appellant.

The issues in this case and the delineation of what acts exactly are covered by absolute judicial and quasi-judicial immunity are central towards the prevention of corruption by public officials by honest services fraud. When a citizen goes to court, he expects that the court will be free from honest services fraud.

When a citizen seeks redress of his grievance against state/county officials, all aspects of the case including the acts of the state/county defendants and their staff must be absolutely void of honest services fraud and any violation of their fiduciary duty owed the public which of course Forte is a member.

If it is not, then Forte has been deprived of his intangible right to honest services by his government.

The U.S. Supreme Court has the power to limit and/or prevent abuse of power by those entrusted by the citizens to uphold the constitution and protect their rights by identifying which acts are protected and which are not. What is more important than ensuring the people's belief in the government by further drawing the line regarding what a public official is allowed to do (and protected by immunity) when it affects a citizen's constitutional rights?

Appellant Forte is before this court, asking for help, asking for this court to answer the questions on appeal and to do whatever is in its power to see that justice prevails. Forte also requests that should the U.S. Supreme Court see enough alleged facts to warrant a criminal investigation, that it request one be initiated.

STATEMENT OF THE CASE

This case is a civil rights case in which Forte alleges that his civil rights to a fair trial, due process, his intangible right to honest services, and to equal protection of the laws were violated. (*Amendments V, IX, XIV, 42 USC §1983*) Forte alleges that the defendants did conspire to conceal these violations and their obstruction of justice through malicious machinations. Defendants embarked upon a scheme to deprive Forte of honest services by state/county actors while he was/is seeking redress of his grievances against state/county/media defendants and that defendants did abuse the legal process to discredit Forte. (Second Amended Complaint for Violation of Civil Rights and Defamation, hereafter "SAC", Docket #15 of the District Court file).

Forte also requested declaratory relief. He requested that a removal of his cases from the State Court be ordered due to the power and influence of the defendants involved, that the news media defendants publish an article that presents the facts fully to remedy the false light regarding Forte that they had created, and that the district court convene a Federal Grand Jury to investigate the matters of public official and judicial corruption and obstruction of justice as outlined in this lawsuit. (SAC, Docket #15, p.35)

The original complaint was filed on June 26, 2006 with the Second Amended Complaint, the subject of this appeal, being filed on November 3, 2006. (Docket #15.) Forte was granted permission to e-file. (Clerk's Notice, Docket #18). State, county, and news media Defendants filed motions to dismiss and/or to strike (under the California anti-SLAPP statute) and for attorneys fees and costs. (Docket #21,23,26). They also requested a stay on discovery pending these motions. (Docket #31,34,35).

Forte requested a continuance of the motions to dismiss to allow him time to adequately prepare opposition in light of the burden of legal work he had in the State court cases and the fact that not all of the 28 defendants had been served with the complaint. (Case Mgnt Stmt, Docket #38, p.5:26-6:22,#39). Forte also filed a motion to permit discovery on January 3, 2007. (Motion, Docket #50). These motions were denied.

Forte filed opposition to all motions for dismissal as well as pertinent Requests for Judicial Notice (RJN) in support of his opposition thereof. (Opposition, Dockets #48,49,52,53,54,55,57, 67,88 RJN, Dockets #90,91,93,97,98,102,103). On January 8, 2007, Defendant James Burrus, FBI agent, filed a

motion to dismiss which Forte also opposed. (Motion, Docket #73,108-9).

On or about January 12, 2007, the United States somehow added themselves as a defendant stating that Forte had erroneously sued them as FBI Special Agent James Burrus. No certification pursuant to *28 U.S.C. §2679(d)* has been filed in the case. Forte opposed the Federal Defendant's Motion to Dismiss and the insertion of the United States as a defendant. (Docket #108)

Hearings were held on January 29, 2007 and February 26, 2007 (Docket #145). All the motions to dismiss and/or strike were heard and argued (Minute Order, Docket # 105), then taken under submission and determined to be moot due to dismissal of case based upon erroneous application of absolute judicial immunity. (Order, Docket #136).

On April 23, 2007, Forte filed a request for sanctions under *FRCP Rule 11(b)* and *Rule 11(c)(1)* (Docket #126) based upon perjury of the news media defendants and their attorney.

On April 25, 2007 Forte filed a request for TRO and OSC (Docket #131) based upon the potential monopoly of the Defendants including The Monterey Herald and McClatchy newspapers, and their parent media companies due to a pending sale.

Judge Ware issued his ruling on April 26, 2007 (Order, Docket #136), dismissing the case against the state and county defendants based on judicial immunity, dismissing the case against U.S. FBI agent Burrus deeming that he is not a proper defendant, and dismissing the claim against the news media defendants stating that he is declining to exercise supplemental jurisdiction since he has dismissed all claims over which it had original jurisdiction, i.e. civil rights violation, and that the only claim left against the

news media defendants is one of a state law defamation.

Judge Ware also denied all other motions as moot, and did not address the complaint's request for declaratory relief.

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

Due to a federal question regarding violation of civil rights, the denial of Forte's intangible right to honest services and what could be reasonably framed as the civil side of honest services fraud by state, county and media defendants and a conspiracy to conceal such violations by defaming Forte in order to discredit his allegations, the district court had subject-matter jurisdiction and venue pursuant to 28 U.S.C.A. §1331, §1367, §1391(b).

On April 26, 2007, the district court entered final judgment disposing of all issues in Forte's Complaint without leave to amend. Forte filed a timely notice of appeal on May 25, 2007. Appeal in the Ninth Circuit Court was authorized by 28 U.S.C.A. §1291.

STATEMENT OF FACTS

Forte is a citizen and resident of the State of California. SAC ¶4. As an entrepreneur, he enjoyed a successful career as an executive recruiter within the healthcare industry for the past twenty years. Id. He was certified as a candidate for Governor of California in the Recall Election of 2003, and he now writes for/ publishes a newspaper called the Badger Flats Gazette. Id.

Forte has acted as his own attorney in cases filed in Monterey Superior Court since 2002 because attorneys have said they could not represent him because they feared reprisal and retribution from judicial officers and public officials involved in obstruction of justice against Forte. Id.

As his own attorney, he won two appeals, one overturning a judgment rendered by Defendant Judge O'Farrell, and his documents outlined evidence of honest services fraud by the Monterey Superior Court and private attorney officers of such court which continues and whose objective it is to deprive Forte of a fair and impartial tribunal. Id.

A. History of Judge O'Farrell and Forte

On March 8, 2001, in order to conceal the initial crimes of Monterey Superior Court Judge Terrance Duncan in fixing the specific performance trial of *Forte v. Powell* M45327, a real estate lawsuit, with the Horan Law firm and the Fenton Keller law firm suborning the perjury of a witness Ms. Crabb, O'Farrell granted Forte's attorney leave to withdraw as attorney of record and abandon Forte thirty-eight days prior to the trial on misrepresentation. O'Farrell then refused a continuance for Forte to seek a new attorney. SAC ¶19, p.18:2-11.

On or about December 10, 2003, O'Farrell was served with a copy of the opening brief in the appeal of his ruling in *Forte v. Lichtenegger* M58208, a legal malpractice case, which set out in great detail with evidence that O'Farrell had been involved in concealing the trial fixing in *Forte v. Powell*. SAC ¶19.

On December 19, 2003 in the case of *Forte v. Albov*, M54914, the Fenton and Keller law firm was bringing a motion to quash the deposition of Ms. Crabb who had provided suborned perjury in the case

of *Forte v. Powell*. The case was assigned to Judge Michael Fields.

Judge Fields was not disqualified, yet O'Farrell "took" the case, in other words, used his position as Supervising Judge of the Civil Department and "took" the case for himself, and appeared at the motion hearing on December 19th with the purpose of stopping Ms. Crabb's deposition. SAC ¶19, p. 17:1-8.

Before the commencement of the hearing of the motion, Forte asked O'Farrell how he was assigned the case and O'Farrell responded that Judge Fields had disqualified himself, and he's "got the case" and "that is the end of it." Forte attempted to speak, O'Farrell prevented him and warned him that he would cite Forte for contempt.

Forte presented a peremptory challenge CCP §170.6. Then, O'Farrell had the bailiff arrest and remove Forte from the courtroom. Without Forte's presence, O'Farrell convened the hearing after a recess and acknowledged the peremptory challenge to opposing counsel, determined that time was not of the essence, and another judge would be reassigned to the case. (SAC ¶19, Req. For Jud. Notice hereafter RJN, Docket #54,Ex.1,p.1-3)

O'Farrell then brought Forte back to the courtroom, handcuffed behind his back, and put him on display in the jury's booth for a couple more hours. SAC ¶19, RJN, Docket #54, Ex.2, p.5:21-22. When the law and motion hearings were completed, O'Farrell then convened a contempt hearing. (RJN, Docket #54, Ex.2) O'Farrell acted as judge, juror, and executioner.

O'Farrell did not read Forte his Miranda Rights nor allow him to have an attorney present. He did not remove his handcuffs. Forte explained his side to O'Farrell and a recap of some of their history and

personal embroilment. Id. p.4-9. O'Farrell sentenced Forte to go immediately to jail for the remainder of the day. Id. p.11:12-15.

O'Farrell went on to have conversations with reporters from the Monterey Herald to plant the story of December 19, 2003 printed as a front page article entitled, "Recall Candidate Jailed for Contempt" on December 20, 2003, as being reported by "unnamed witnesses" to libel and defame Forte, discrediting any allegations Forte may make against the Monterey Judicial community. SAC ¶19,p.17:20-24.

Forte proceeded to contact Defendant The Monterey Herald, hereafter The Herald, for a retraction and opportunity to respond and requesting that an article be written to provide a more accurate account of what took place. The Herald did not respond. Forte subpoenaed The Herald reporter, Defendant Royal Calkins to deposition, but defendant did not appear, and Judge Adrienne Grover ruled that Forte's order to show contempt was "moot." (Forte Decl., Docket #48, p.6:3-7:3,11:8-11)

On August 30, 2004, Forte won the appeal in *Forte v. Lichtenegger* M58208, overturning O'Farrell's ruling, and filed the lawsuit of *Forte v. O'Farrell* M72599 on December 17, 2004 which contained allegations concerning false imprisonment and arrest, battery, abuse of process and intentional infliction of emotional distress. SAC ¶19.

B. Forte speaks in opposition to Gov. Schwarzenegger's nomination of Monterey Superior Court Judge Wendy Duffy to the Commission of Judicial Nominations.

At all times since December of 2003, Forte provided Lockyer, Attorney General of the State of

California at that time, substantial and reliable information regarding his allegations of judicial corruption in Monterey County. Lockyer ignored such facts and failed to investigate. SAC ¶8. Forte submitted all the evidence of corruption to the Commission on Judicial Nominations in his request for permission to speak at the nomination hearing of Monterey Superior Court Judge Duffy. The request was granted.

Two days before the hearing, Forte was served with the Motion to Declare him a vexatious litigant in the case of *Forte v. O'Farrell* on May 14, 2005 brought forth by Defendant AG Lockyer (hereafter Lockyer), his employees including Defendant Hammerness, and Defendant Gov. Schwarzenegger on their own behalf, not on behalf of the AG's Office's client, O'Farrell. On May 16, 2005, Forte spoke in opposition to the nomination, and a public record video tape was created. SAC ¶4-14.

During his presentation, Forte provided evidence and information which should have required an investigation of Judge Wendy Duffy and members of the Monterey Superior Court bench including Judge Robert O'Farrell for possible judicial misconduct, improprieties, and obstruction of justice prior to the confirmation of Judge Duffy's appointment.

The Commission on Judicial Nominations, comprised of Defendant Chief Justice Ronald George, Sixth Appellate Justice Conrad Rushing, and Defendant AG Lockyer, treated Forte in an untoward manner at the hearing, ignored his allegations, and changed the Judicial Appointments Commission Guidelines on about July of 2005, after Forte had requested a copy, in order to attach a copyright to the tape, in an effort to keep the public video tape

concealed and prevent Forte from obtaining a copy of it. SAC ¶14.

C. The Conspiracy to Setup and then Execute the Defamation of Forte to Conceal the Violations of His Civil Rights.

1. The Setup - The Motion to Declare Forte a Vexatious Litigant and the creation of misleading and inaccurate orders.

Defendant Assistant Attorney General Hammerness represented O'Farrell. As defendant in the case, O'Farrell, who is the Supervisor of the Civil Department (RJN, Docket #97,Ex.4) and assigns cases, assigned the case to himself, twice, forcing Forte to file an unnecessary challenge for cause against him. Id., p.19. O'Farrell conspired with Hammerness, and other defendants, i.e., Governor Schwarzenegger, Lockyer, Schiavenza, and Pon (all AG personnel), to bring a motion to declare Forte a vexatious litigant on or about May 12, 2005. SAC p.5:24-28,8:12-14,9:11-15,24-26,10:8-20,19:11-13).

The purported motion was brought on behalf of Gov. Schwarzenegger, AG Lockyer, AGA Schiavenza, Pon, and Hammerness, not on behalf of O'Farrell, with the added benefit for them that it would likely disrupt Forte's presentation. Chief Justice George realized what was taking place. (Forte Decl., Docket #48, p18:15-17).

At the hearing on June 30, 2005, Judge Golden denied the motion to declare Forte a vexatious litigant and ruled that the movants had no standing to bring what he called a "purported" motion. (Forte Decl., Docket #48, Ex.20).

Forte notified news media defendants Speizer and Calkins of The Herald, Knight Ridder, and others that the motion to declare him a vexatious litigant was DENIED on multiple occasions between June 30, 2005 and October 12, 2005. (Forte Decl., Docket #48, p.85,88,92,104, Ex.20,21,23,27).

On October 12th, 2005, Forte filed a motion to correct a misleading title of the order issued by Judge Golden denying the motion to declare Forte a vexatious litigant. (Forte Decl, Docket #48,Ex.27). Instead of the order being titled, "Order Denying the Motion to Declare Plaintiff Forte a Vexatious Litigant," it was titled, "Order Denying Motion for Prefiling Order and Order Requiring Plaintiff to Furnish Security (CCP §391-391.7)."

Forte argued that the title indicated that somehow Forte was declared a vexatious litigant who is required to furnish a security deposit prior to filing a complaint, and such is absolutely not the case.

However, Judge Golden denied Forte's request on November 23, 2005, and issued a minute order, which again, contained an incorrect statement which stated, "Plaintiff [Forte] requests a correction of the title of the order declaring plaintiff a vexatious litigant. Request is denied." (Hennessy Decl. Docket #28,Ex.F)

2. The Commissioner Rutledge Scandal and *Forte v. DA Flippo* MAR125367

Concurrently, in a small claims case of *Forte v. DA Flippo*, after Commissioner Rutledge refused to disqualify himself as required by statute when challenged for cause, he filed an order on May 16, 2005 (the same day as the hearing on Commission

Appointments Forte was speaking at) setting a trial on May 23, 2005. (RJN, Docket #91,Ex.9).

Despite Forte having filed a change of address on April 23, 2005, the order was allegedly sent to the wrong address, and Forte never received it. DA Flippo and ADA Spitz were granted a judgment by Commissioner Baker for the non-appearance of Forte. The judgment also was allegedly sent to the wrong address and never received.

Forte has alleged that Comm. Rutledge had fixed the trial with DA Flippo and Spitz violating his rights. (SAC ¶22, RJN, Docket #91,p.2:1-7,13-15,Ex.10).

In early August of 2005, Crystal Powser, an ex-clerk of the Monterey Superior Court and ex-fiancé of Commissioner Rutledge, emailed to all personnel at the courthouse information regarding Commissioner Rutledge having "fixed" cases in his courtroom for family and friends, including another judge.

The Monterey Superior Court Executive Committee, of which O'Farrell is a member, directed the DA's Office to investigate, and the news media defendants reported on the story. (SAC ¶12, RJN #91,p2:8-12,Ex.7-8).

Powser filed a declaration in the case of *Forte v. O'Farrell* on November 16, 2005, which was used by the Commission on Judicial Performance to halt a proceeding in which Monterey Superior Court Judge Michael Fields was special master. (RJN, Docket #102,Ex.1,p.17).

The file of the case *Forte v. DA Flippo* disappeared during the time period that DA Flippo was investigating Commissioner Rutledge for obstruction of justice and fixing of traffic tickets including those for members of the Monterey Superior Court, family and friends. (SAC ¶22).

Forte alleges that the file was hidden for the purpose of obstructing justice against Forte and keeping concealed the fact that DA Flippo and his office could not be investigating Rutledge due to the conflict of interest. Upon request for a copy of the CD recording of the hearing held on May 23, 2005, the entire hearing, if it was even there, was static and inaudible, although the cases before and after were audible. SAC ¶16,22.

Forte provided information regarding their conflict of interest to the DA's Office and Defendant ADA Sue Stryker as well as the media in Monterey County including the news media defendants named herein.

The information was concealed from the public in conspiracy between the defendants to hide their violations of Forte's rights and to prevent Forte's allegations of rampant judicial corruption, hand in hand with the media, from being credible. SAC ¶15-16,23,p.24:26-25:3).

The DA's Office completed their investigation and stated that all of the cases they investigated that showed Rutledge's obstruction of justice (case fixing) were outside of the statute of limitations, therefore there was nothing they could prosecute. Rutledge resigned. Forte had repeatedly pointed out the *Forte v. DA Flippo* had occurred a mere few months prior, but was ignored. (SAC ¶15, RJN #91,p2:8-12,Ex.7-8).

Although Forte did not specifically allege that DA Flippo and ADA Spitz had utilized their position to bypass standard procedure and that they had violated due process rights of Forte (not to mention possible mail fraud) in the small claims case of *Forte v. DA Flippo*, Forte presented evidence to the district court that the service of the small claims complaint, which

was to be sent USPS certified mail by the courthouse, was tampered with.

Miraculously (sarcasm), the certified mail was signed for and received on the same day Forte submitted it to the court, five days prior to the date on the USPS Certified Mail receipt, which is normally dated the day the item is submitted for mailing. (RJN #91,p.1-2) (FYI, Because this was done, DA Flippo and Spitz were able to issue the check for the refund of witness fees owed to Forte before the complaint was technically mailed and therefore not have the record show that they lost the claim nor have to pay for the costs of the claim.

It didn't work because the person receiving the complaint signed the actual date they accepted the package, which could not possibly have gone through the USPS on that same day, and exposed their shenanigans with the court.)

3. The defamation to discredit Forte

On December 4, 2005, The Herald printed an article in excess of 2,000 words on the front page of the Sunday paper stating that Forte was a vexatious litigant among other things which painted Forte in a bad light. (Hennessy Decl, Docket#28,Ex.A). News media Defendant Hennessy had based this article on statements obtained from the incorrect and misleading minute order by Judge Golden issued on November 23, 2005 (the same minute order which struck and sealed the Declaration of Crystal Powser.) (Id.,p.4:12-19, Ex.F).

Hammerness, knowing that this November 23, 2005 minute order was incorrect, distributed such order to members of the media in its entirety in an effort to get the false fact that Forte was declared a

vexatious litigant published. (SAC ¶10,line 16-18, Forte Decl., Docket #48,p.41:17-20,Ex.138).

Forte requested a retraction, however, the retraction was inadequate, consisting only of a few sentences and printed on the back page. Forte notified Defendant Tony Ridder, employee of Knight Ridder, who was responsible for what is published in his newspapers. He willfully ignored the intentional libeling and defaming of Forte and did not take appropriate action to investigate and print retractions of substance. SAC ¶24.

Defendant Gordon Yamate, corporate counsel for Knight Ridder, refused to provide Forte information concerning what publications owned by Knight Ridder had published the article of December 4, 2005. By doing so, he continued to help propagate the defamation of Forte. SAC ¶25.

Defendant Craig Smith published statements which were libelous based upon information that he obtained from the Herald's article of December 4, 2005. Smith ignored Forte's requests to correct the statement that Forte had been declared a California vexatious litigant. Smith finally printed a minor retraction over two months later. SAC ¶26.

Defendant McClatchy Newspapers was put on notice regarding the illicit and unethical activities of the Herald, which was owned by Knight Ridder and bought by McClatchy, who was then planning on selling it to MediaNews Group. SAC ¶7.

4. The Continued Efforts to Conceal the Violation of Forte's Civil Rights by Monterey County Defendants.

On November 8, 2005, Forte sent a letter to Defendant Monterey County Counsel Charles McKee requesting that he report for investigation the

obstruction of justice by his clients DA Flippo and ADA Spitz in conspiring to fix the case of *Forte v. DA Flippo*, MAR125367, and the conflict of interest in DA Flippo investigating Commissioner Rutledge for ticket fixing, along with a summary outline of event and facts which this request was based upon.

Copies were sent to Schwarzenegger, Senator Denham, the FBI and news media including defendants named herein. (SAC ¶17, Forte Decl, Docket #48,p.28:7-15, Ex.94). McKee did not do as requested. SAC ¶17.

Forte notified him that Forte intended on enacting a citizen's arrest upon McKee and requested McKee to co-operate by turning himself into the local police department. Forte requested aid from Sheriff Kanalakis to ensure a peaceful and lawful citizen's arrest. There was no response. Id.

Instead of responding, McKee obtained a Temporary Restraining Order against Forte stating that Forte had made a credible threat of physical violence in a letter Forte wrote to Kanalakis (sent to McKee only by Kanalakis, (RJN, Docket 91,Ex.16,p.2)), through an unnoticed hearing signed ex parte by Commissioner Baker.

Forte alleged that McKee did this in order to defame and libel Forte, to prevent him from pursuing his legal rights as a citizen concerning performing a citizen's arrest upon McKee's person, and that McKee's actions and non-actions were done in conspiracy with his clients to keep concealed the obstruction of justice and violations of Forte's rights. Id.

Defendant Sheriff Kanalakis, aware of Forte's allegations against McKee and other county defendants, violated his duties as a peace officer in refusing to aid Forte in his citizen's arrest as provided

for by statute. He did so in conspiracy with the other defendants to conceal the obstruction of justice and violations of Forte's rights. Id.

Forte subpoenaed Kanalakis to testify at trial, but County Counsel McKee's Office made a motion to quash the subpoena. This was done in conspiracy to conceal the testimony of Kanalakis which would reveal that there was in fact no credible threat of physical violence. This was also done to prevent Kanalakis from having to provide information to Forte concerning the names of the bailiffs in the courtroom on September 1, 2004 where Forte suffered a heart attack, was taken from the courtroom by ambulance, and had emergency open-heart surgery.

The purpose of concealing such information was to keep secret that there were eight bailiffs present in the courtroom during the civil proceeding intended to exert pressure and stress upon Forte and to intimidate him during his presentation in court concerning rampant public official corruption by the judges of the Monterey Superior Court Bench. Id.

5. Judge Golden, the absence of the written reason for disqualification, and the continued effort to conceal the violations of Forte's civil rights.

When Judge Golden withdrew from the case approximately in January of 2006, he did not provide a written reason for disqualification as required by *California Rules of Court* 6.608 in the case of *Forte v. O'Farrell* M72599.

Forte has alleged that Defendant Chief Justice George, in his capacity as Chairperson of the Commission on Judicial Performance, and of the Assigned Judges Programs, denied providing Forte

with the documents evidencing the reason for the withdrawal of Judge John Golden.

George was made aware of Forte's allegations of corruption, but in conspiracy to conceal the violations of Forte's rights, he continues to ignore the evidence and changed the Judicial Appointments Commission Guidelines to prevent Forte access to a copy of the hearing record (by attaching a copyright to the video) in an effort to bury evidence that he had been informed of the corruption of the Monterey Superior Court. SAC ¶14.

Defendant Judge Sillman was the presiding judge of the Monterey Superior Court who was also provided information and evidence of the corruption. (Forte Decl., Docket # 48,p35:13-17,Ex.117). He ignored Forte's letters and requests for him to request an investigation, also in conspiracy to conceal the violations of Forte's rights.

Sillman refused to give Forte information regarding what date the Monterey bench recusal was done. (Forte Decl., Docket # 48,p34:13-17,Ex.117) He refused to provide the reason why Judge Golden withdrew from the case. (Forte Decl., Docket # 48,p37:15-22,Ex.111).

Sillman intentionally disregarded his code of ethics and responsibilities to ensure fair administration of Forte's cases in order to frustrate and defeat Forte's attempt to have a fair tribunal of his cases within the Monterey Superior Court thereby joining in the conspiracy to violate Forte's rights. SAC ¶20.

Defendant Judge Lee Cooper was assigned to the case of *Forte v. O'Farrell* and *Forte v. Lichtenegger* M58208. Cooper intentionally ignored his responsibilities under his Judicial Canon of Ethics to report the obstruction of justice by the Executive

Committee of the Monterey Superior court, O'Farrell, DA Flippo, and ADA Spitz.

On July 8, 2006, Cooper ruled that he had no jurisdiction of the case of *Forte v. O'Farrell* M72599, that "jurisdiction over this matter was in the Court of Appeals."

He then proceeded to rule that the minute order issued by Judge Golden in the case, and sent to media resulting in their libel on December 4, 2005, stating that Forte was declared a vexatious litigant, was not erroneous and that there was no good cause to modify the order, thereby joining in the conspiracy to conceal what the other defendants had done in defaming Forte to hide their previous acts. SAC ¶21.

Cooper, in his explanation of withdrawal as judge, when he already had no jurisdiction over the case, libeled and defamed Forte by stating that Forte had committed perjury when Forte had not. Id.

Forte alleges that Judge Cooper conspired with other defendants to continue the conspiracy to conceal violations for Forte's civil rights and the defamation use to discredit Forte. Id.

6. FBI Agent Burrus, in conspiracy to conceal violations of Forte's civil rights, lies in order to "see no evil"

Various agents of the FBI refused repeatedly to take information by never responding, never calling back, or cutting a conversation short, essentially giving Forte the "run around" when Forte attempted to give the details to them regarding the actions of the other defendants herein in obstructing justice, violating Forte's civil rights, and working thereafter to defame and harm Forte in order to conceal what they did (In

the SAC, Forte refers to these acts as "public corruption").

Defendant FBI Agent James Burrus intentionally and maliciously ignored the fact that neither his agents in the Monterey County FBI's Office, nor any others that Forte attempted to speak to, took information from Forte concerning the public official corruption emanating in Monterey County. Burrus falsely stated that the FBI had investigated the information presented by Forte, and that they had informed Forte that no crimes have been committed. Burrus authored a letter on March 24, 2006 to Congressman Sam Farr which falsely stated that the FBI had received and reviewed information. Forte responded and informed him that the statements in his letter were untrue. There was no response. Forte alleges that the course of conduct of the FBI and agents under the direction of James Burrus has been sanctioned by Burrus to cover and conceal the public official corruption resulting in the violation of Forte's civil rights. SAC ¶27.

7. Other Matters Addressed by Forte

A series of letters had been written and filed to Judge James Ware prior to his ruling and after which clearly brought to his attention matters that would show that he not only had jurisdiction but could not dismiss any defendants due to judicial immunity. Inaccurate minute orders, the "sua sponte" hearing on jurisdiction, the modification of Forte's entries on the ECF filings, and other matters of bearing were addressed in the letters filed. (Docket #,106-7,113-5,118-20,122-4,138)

It is important to note that Judge Ware read all documents in support of and in opposition to all motions, including the media anti-slap motions, yet

denied the motion to conduct discovery, refusing to consider the motions to dismiss as summary judgment motions.

ARGUMENT

Now comes Forte to argue as eloquently but as bluntly as possible, which is at odds with each other at times, the obvious reason as to why the Supreme Court must grant review.

For openers, not to permit Forte to do so would cause our founding fathers to turn over in their graves.

The facts provided thus far in this case are overwhelming as to call for a thorough investigation and a full review of any and all information Forte possesses. The allegations within this complaint are that the press defendants in collusion with the state and county government officials have worked to conceal that members of the Monterey judicial community fixed court cases against Forte and continue to defame Forte for bringing the information forward to the public.

The assault against Forte's rights continue in Merced County where the bench has disqualified itself due to being requested to request an investigation of the Monterey Superior Court Bench.

The case before you alleges that the media/ press defendants conspired with the state/county defendants to defame Forte to the public at large in order to conceal what has generally been called the corruption within the Monterey County judicial system *and its officers of the court*, attorneys at large, offering what is *expected to be* their honest services

(defined by *18 USC §1346*) to the public (Forte) to represent Forte.

Instead of honest services being provided to Forte in seeking his redress of grievances against state/county officials and private actors, he was thrown into a cesspool of local public official corruption with judges fixing court cases for their cronies, and attorneys turning their back on the oath they gave to uphold the law.

The media/press defendants took advantage of the gift of "freedom of the press" to intentionally misreport with malice the battle for justice that Forte has waged not only for himself but for all Americans that travel into a court seeking resolution to their grievances.

The founding fathers did not ever phantom giving immunity to the press for concealing or working with the government to conceal corruption from the public.

State/county officials cannot be immune from civil prosecution for alleged actions done by them when they were defendants in the case by Forte.

As an example, defendant O'Farrell cannot be afforded immunity for taking over the case of Forte v. O'Farrell when a defendant and forcing Forte to file a CCP 170.3.

Dean Flippo and other county defendants cannot be granted immunity for obstructing justice in the case they were defendants in (*Forte v. Flippo, Spitz*, MAR125357) with Commissioner Richard Rutledge being the judge.

Granted, perhaps Commissioner Rutledge can get away with the blood on his hands, but defendants in that case Flippo and Spitz cannot.

"Plain Talk"

The rules of court request that a succinct statement be made as to why this appeal should be granted. It may seem odd, but in reality, when the reason as to why something should be done is so overwhelmingly simple based upon the obvious facts, it is not simple to put it into "a few words."

Forte finds himself repeating ad nauseum the obvious.

The defendant public officials that Forte seeks his redress of a grievance against cannot use their judicial or quasi judicial immunity to escape liability for obstructing justice in cases against them before the court.

A judge (O'Farrell) who is not a judge in a case against Forte cannot claim immunity for participating in conspiring to obstruct justice against Forte in a case that the judge is an actual defendant in.

A defendant county counsel McKee cannot be given immunity for obstructing justice in a case for co-defendant DA Flippo and Spitz.

The state/county officials cannot be given immunity, nor can the press/media defendants escape liability for colluding with the state/county defendants to conceal the corruption of the system that Forte has uncovered during years of hard work.

The evidence submitted in this case before the court has director of the CIA, Mr. Leon Panetta, neck deep in ignoring and helping to conceal the corruption of the Monterey Judicial community that he comes from.

Without a review of this case on appeal, there will be forever an abyss that citizens will fall into when seeking a redress of their grievance against public officials when the public officials are in cahoots with

the media/press to assist them in assailing the rights of the citizen unchecked to cover their own malfeasance.

The assault against Forte continues as this document is being filed and it must stop. Forte with or without this review being granted will not be deterred and the public will know the truth of what has been taking place.

It is now time for the Supreme Court to decide if they wish to go along with the Monterey County Good ol' Boys' assault upon Forte, or take them to task, and let the healing begin.

"Liberty and Freedom at Stake"

> "During the American Revolution, a free press was identified by Revolutionary leaders as one of the elements of liberty that they sought to preserve. The Virginia Declaration of Rights (1776) proclaimed that 'the freedom of the press is one of the greatest bulwarks of liberty and can never be restrained but by despotic governments.' Similarly, the Constitution of Massachusetts (1780) declared, 'The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth.'
>
> Following these examples, the First Amendment to the United States Constitution restricted Congress from abridging the freedom of the press and the closely associated freedom of speech.
>
> John Locke's ideas had inspired both the French and American revolutions. Thomas Jefferson wanted to unite the two streams of

liberalism, the English and the French schools of thought. His goal was to create a government that would provide both security and opportunity for the individual.

An active press was essential as a way of educating the population. In order to be able to work freely, the press must be free from control by the state. Jefferson was a person who himself suffered great calumnies of the press.

Despite this, in his second inaugural address, he proclaimed that a government that could not stand up under criticism deserved to fall. Jefferson said:

> 'No experiment can be more interesting than that we are now trying, and which we trust will end in establishing the fact, that man may be governed by reason and truth. Our first object should therefore be, to leave open to him all avenues of the truth'.

In 1931, the U.S. Supreme Court decision in *Near v. Minnesota* used the 14th Amendment to apply the freedom of the press to the States. Other notable cases regarding free press are:

New York Times Co. v. United States' (1971): The Supreme Court upheld the publication of the Pentagon Papers.

New York Times Co. v. Sullivan (1964): The Court decided that in order for written words to be libel, it must be, first of all, false."

(The above excerpts was taken from Wikipedia.com)

Is there absolute proof that the statement set

forth as facts printed by the media defendants were false facts? Absolutely. There is no question about it. The media defendants printed a very small correction to a 2,000 word article saying the "mistake" was due to a court record error.

The state/county defendants say there was no mistake in the court records. In other words, the state defendants are pointing the finger at the media defendants as often happens when two parties both guilty of a conspiracy in committing crimes get caught. They blame each other while pleading their own innocence.

The intentional false statement printed, stating that Forte was declared a vexatious litigant and that he was said to be mentally unstable by the co-defendant O'Farrell, was a benefit to the state/county defendants who are subjects of the lawsuit by Forte.

The press/media was given a license to murder a person's reputation but there was a limitation, they could not print something that was intentionally false and with malice. In this case, they went beyond such by not only doing such an act, but with the added purpose of concealing the crimes of public officials against Forte from the public.

How far against the principles of our founding fathers is that? Out of this world is how far.

"Lying Judge James Ware"

King Solomon would have laughed until he peed his pants at the bizarre wisdom of Lying Judge James Ware. For the record, when doing a Google search on District Court Judge James Ware, the second hit is "Lying Judge James Ware". Ware got such dubious distinction by lying about having his brother shot off of his handlebars and dying in his

arms. The event never happened.

Judge James Ware, when confronted with having to rule upon an Anti-Slapp motion brought by the media defendants, ran for the exit door by saying he did not have jurisdiction.

Ware then dismissed the case and said that Forte could re-file his action in state court against the media defendants. What kind of a nut is Judge Ware anyway?

Ware knowing that he has improperly granted total immunity for every single act of the state/county defendants who would be involved in trying the case of Forte against the media defendants in the lower court now has given them the green light to continue such assault unchecked against Forte.

It is so unbelievable, illogical, and unfair to Forte that volumes of law books about fairness could be used to demonstrate what lunacy it is.

But what's the point of pointing it out for the millionth time? This court alone should grant a review upon such a bizarre ruling so it is made clear that a citizen can not be deterred by the government from seeking redress of a grievance against it.

"Following the Standards of Review"

In addition to the brief arguments presented in the Statement of Jurisdiction, petitioner submits that courts must follow the Standards of Review, in particular the following:

1. Dismissal of a pro se complaint without leave to amend is proper only if it is "absolutely clear that the deficiencies of the complaint could not be cured by amendment." [*Lucas v. Department of Corrections*, 66 F3d 245, 248 (9th Cir. 1995); see

Flowers v. First Hawaiian Bank, 295 F3d 966, 976 — "We are very cautious in approving a district court's decision to deny pro se litigants leave to amend"].

2. Where the district court considered *matters outside the pleadings* in making its decision, the dismissal will be reviewed as a summary judgment motion. [*FRCP 12(d)*; *Jacobson v. AEG Capital Corp.*, 50 F3d 1493, 1496 (9th Cir. 1995)—court considered affidavits and exhibits submitted in support of and in opposition to the motions to dismiss and the anti-slapp motions.

CONCLUSION

This Petition for Writ of Certiorari, if granted, will establish important precedents by:

1. Identifying explicit acts by government officials, including judges, which are or are not protected by immunity and to encourage the faith in the judiciary by the public.
2. Determining the immunity boundaries of public officials and/or their counsel when defendants in a case.
3. Promoting honest services by public officials and and again, the faith in government by the public.
4. Requiring appellate courts to support their opinions with concise explanations supported by the facts as part of due process owed to a citizen.
5. Establishing the importance of the courts in following the federal standards of review.

Dated: September 13, 2009

Eugene Forte

APPENDIX

18 USC § 1346. Definition of "scheme or artifice to defraud"

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

28 USC § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 USC § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292 (c) and (d) and 1295 of this title.

28 USC § 1331. Federal question
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USC § 1367. Supplemental jurisdiction
(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,
(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
(3) the district court has dismissed all claims over which it has original jurisdiction, or
(4)in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

28 USC § 1391(b). Venue generally

(b)A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in
(1) a judicial district where any defendant resides, if all defendants reside in the same State,
(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or

(3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 USC § 2071. Rule-making power generally
(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)
(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.
(2)Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a)

shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

28 USC § 2679. Exclusiveness of remedy

(d)

(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding

is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346 (b) of this title and shall be subject to the limitations and exceptions

applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675 (a) of this title, such a claim shall be deemed to be timely presented under section 2401 (b) of this title if—

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and
(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

42 USC § 1983. Civil action for deprivation of rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment XIV

(Ratified July 9, 1868)

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

The validity of the public debt of the United States,

authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave. But all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

2009 California Rules of Court Rule 10.608. Duties of all judges (previously Rule 6.608):

Each judge must:

(1) Hear all assigned matters unless:

(A) He or she is disqualified; or

(B) He or she has stated in writing the reasons for refusing to hear a cause assigned for trial, and the presiding judge, supervising judge, or master calendar judge has concurred;

(2) Immediately notify the master calendar judge or the presiding judge on the completion or continuation of a trial or any other matter assigned for hearing;

(3) Request approval of the presiding judge for any intended absence of one-half day or more, within a reasonable time before the intended absence;

(4) Follow the court's personnel plan in dealing with employees; and

(5) Follow directives of the presiding judge in matters of court management and administration, as

authorized by the rules of court and the local rules and internal policies of the court.
Rule 10.608 amended and renumbered effective January 1, 2007; adopted as rule 6.608 effective January 1, 2001; previously amended effective January 1, 2006.

California Code of Civil Procecure § 170.6. Peremptory Challenge

(a)(1) No judge, court commissioner, or referee of any superior court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in the action or proceeding.

(2) Any party to or any attorney appearing in any action or proceeding may establish this prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury or an oral statement under oath that the judge, court commissioner, or referee before whom the action or proceeding is pending or to whom it is assigned is prejudiced against any party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee. Where the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to or who is scheduled to try the cause or hear the matter is

known at least 10 days before the date set for trial or hearing, the motion shall be made at least 5 days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. If directed to the trial of a cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance. If the court in which the action is pending is authorized to have no more than one judge and the motion claims that the duly elected or appointed judge of that court is prejudiced, the motion shall be made before the expiration of 30 days from the date of the first appearance in the action of the party who is making the motion or whose attorney is making the motion. In no event shall any judge, court commissioner, or referee entertain the motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there is no opening statement by counsel for plaintiff, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion shall be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other

hearing, proceeding, or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.
A motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (3), the party who filed the appeal that resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3)If the motion is duly presented and the affidavit or declaration under penalty of perjury is duly filed or an oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chair of the Judicial Council shall assign some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. Except as provided in this section, no party or attorney shall be permitted to

make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

(4) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(5) Any affidavit filed pursuant to this section shall be in substantially the following form:
(Here set forth court and cause)
State of California,) PEREMPTORY CHALLENGE
County of _____) ss.
_____, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding). That _____ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this
____ day of ____, 20__.
(Clerk or notary public or other
officer administering oath)

(6) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.
(b) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.
(c) If any provision of this section or the application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable. [Added 1957 ch. 1055; Amended 1959 ch. 640, 1961 ch. 526, 1965 ch. 1442, 1967 ch. 1602, 1976 ch. 1071, 1981 ch. 192, 1982 ch. 1644, 1985 ch. 715, 1989 ch. 537, 1998 ch. 167, 2002 ch. 784, 2003 ch. 62.]

Federal Rule of Civil Procedure Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions
(b) Representations to the Court.
By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the

person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General.

If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

Federal Rule of Civil Procedure Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(d) Result of Presenting Matters Outside the Pleadings.

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

General Order of the Ninth Circuit Court of Appeals: 4.3.a. Memoranda Dispositions

A memorandum disposition cannot be cited as precedent. Unlike an opinion for publication which is designed to clarify the law of the circuit, a memorandum disposition is designed only to provide the parties and the district court with a concise explanation of this court's decision. Because the parties and the district court are aware of the facts, procedural events and applicable law underlying the dispute, the disposition need recite only such information crucial to the result. Accordingly, all that is necessary is a statement such as the following:

> "Defendant's statements were volunteered rather than made in response to police questioning, and were therefore admissible. United States v. Cornejo, 598 F.2d 554, 557 (9th Cir. 1979). AFFIRMED."

U.S. Supreme Court Rule 10. Considerations Governing Review on Writ of Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of

certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Eugene Forte,

Plaintiffs,

v.

Knight Ridder, et al.,

Defendants.

/

NO. C 06-03948 JW

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS; DENYING ALL OTHER MOTIONS AS MOOT

I. INTRODUCTION

Eugene Forte ("Plaintiff"), in *pro per*, brings this action against twenty-eight Defendants alleging violations of due process pursuant to 42 U.S.C. § 1983 and related state law claims. Presently before the Court are Defendants' motions to dismiss Plaintiff's Second Amended Complaint[1] and Plaintiff's Motion to

[1] These motions are: (1) State Defendants' Notice of Motion and Motion to Dismiss and/or Strike Second Amended Complaint; Motion for Award of Costs, Fees, and Other Relief Pursuant to 42 U.S.C. § 1988, hereafter, "State Motion," Docket Item No. 21; (2) Motion to Dismiss (Footnote 1 continued bottom of p. A-21)

Permit Discovery. The Court conducted hearings on January 29, 2007 and February 26, 2007. Based on the papers filed to date and the parties' arguments at the hearing, the Court GRANTS Defendants' motions, and DENIES Plaintiff's motion.

II. BACKGROUND

Plaintiff alleges as follows:

Plaintiff is a citizen and resident of the State of California. (Second Amended Complaint for Violation of Civil Rights and Defamation ¶ 4, hereafter, "SAC," Docket Item No. 15.) For twenty years, Plaintiff enjoyed a successful career as an executive recruiter within the healthcare industry. Id. He was certified as a candidate for Governor of California in the Recall Election of 2003. Id. He also writes for a newspaper called the Badger Flats Gazette. Id.

1. Plaintiff's Contempt Arrest of December 19, 2003

On December 19, 2003, at a motion hearing in a state civil action brought by Plaintiff in the Monterey Superior Court, Plaintiff served a motion to

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Plaintiff's Second Amended Complaint with Prejudice [F.R.C.P. 12(b)(1) and 12(b)(6)], hereafter, "Monterey County Motion," Docket Item No. 23; (3) News Media Defendants' Special Motion to strike Plaintiff's Second Amended Complaint Pursuant to Cal. Code Civ. P. § 425.16; Motion for Award of Fees and Costs Pursuant to Cal. Code Civ. P.§425.16(c), hereafter, "News Media Motion," Docket Item No. 26; and (4) Federal Defendant's Motion to Dismiss Plaintiff's Second Amended complaint. Hereafter, "Federal Defendant's Motion," Docket Item No. 73.)

disqualify Superior Court Judge Robert O'Farrell pursuant to California Civil Procedure Code section 170.6. (SAC ¶ 19.) At the hearing, Judge O'Farrell arrested Plaintiff for contempt. Id. Acknowledging Plaintiff's motion to disqualify, Judge O'Farrell then presided over Plaintiff's contempt hearing. Id. Plaintiff was not read his Miranda rights nor given access to an attorney. Id. Judge O'Farrell then allegedly induced the Monterey Herald to print a story about Plaintiff's arrest in order to libel and defame Plaintiff. Id.

2. The Monterey Herald's Article on December 20, 2003

On December 20, 2003, the Monterey Herald ran a front-page article about Plaintiff's contempt arrest. (SAC ¶ 19.) Knight Ridder, owner of the Monterey Herald, knew the article contained false information, but acted intentionally and with malice to defame Plaintiff. (SAC ¶ 29.) Knight Ridder and the Monterey Herald then continued to omit facts from subsequent articles which, if known to the public, would have established that Plaintiff had been the victim of public and judicial corruption. (SAC ¶¶ 5-6, 29-36.) At all relevant times, Knight Ridder and the Monterey Herald conspired with other co-defendants to defame Plaintiff in the eyes of the general public, to paint him in a bad light, and to deprive him of the right to a fair tribunal. (SAC ¶¶ 5-6.)

3. The Attorney General's Failure to Investigate Plaintiff's Contempt Arrest

Subsequent to his contempt arrest, Plaintiff informed Attorney General Bill Lockyer that Judge O'Farrell had violated Plaintiff's civil rights. (SAC ¶ 8.) Lockyer ignored Plaintiff and failed to launch an investigation. Id.

4. Judge O'Farrell's Actions During Plaintiff's Civil Action Against Him

In December 2004, Plaintiff filed a civil action against Judge O'Farrell in Monterey Superior Court, asserting claims arising out of Plaintiff's contempt arrest of December 19, 2003. (SAC ¶ 19.) During the course of the litigation, Judge O'Farrell committed various wrongs, including twice assigning the case to himself; directing clerks to deny Plaintiff's motions for default judgment; causing Plaintiff's case files to go missing; instructing his attorney to file a motion to declare Plaintiff a vexatious litigant; and directing his attorney to state falsely to the press that Plaintiff had been declared a vexatious litigant. (SAC ¶¶ 8, 19.) Judge O'Farrell acted in conspiracy with other co-defendants to defame Plaintiff and deprive him of the right to a fair tribunal. (SAC ¶ 19.)

5. State Officials' Joinder in Motion to Declare Plaintiff a Vexatious Litigant

In litigation brought by Plaintiff against Judge O'Farrell, Attorney General Lockyer knowingly filed a defamatory motion to declare Plaintiff a vexatious litigant. (SAC ¶ 8.) The motion was joined by the Office of the Attorney General and the following state executives: Supervising Deputy Attorney General Paul Hammerness, Senior Assistant Attorney General James Schiavenza, Supervising Deputy Attorney General Tyler Pon, and Governor Arnold Schwarzenegger. The motion contained gross character assassinations and false statements, and was ultimately dismissed. (SAC ¶¶ 8-9.) Nevertheless, Lockyer and Hammerness distributed a document to the media that falsely stated Plaintiff had been declared a vexatious litigant. (SAC ¶¶ 8-10.) The state executives acted in a conspiracy to defame

Plaintiff and deprive him of a fair tribunal. (SAC ¶¶ 9-14.)

6. The Monterey Herald Article of December 4, 2005

On December 4, 2005, the Monterey Herald published an article that Plaintiff had been declared a vexatious litigant, was on a personal vendetta, and had an unclear income stream. (SAC ¶¶ 29, 36.) The article also implied that Plaintiff had been deemed mentally unstable. (SAC ¶ 29.) Knight Ridder, owner of the Monterey Herald, knew these statements were false and published the article intentionally and with malice. Id. Knight Ridder and the Monterey Herald acted in conspiracy with other co-defendants to defame Plaintiff and deprive him of the right to a fair tribunal. (SAC ¶¶ 5-6.) Knight Ridder ultimately published a correction clarifying that Plaintiff had not actually been declared a Vexatious litigant. (SAC ¶ 31.) However, the correction was inadequate, blaming the false statement on an error in a court record. Id.

7. Law Professor Craig Smith's Blog

Craig Smith, a professor at the Santa Barbara College of Law, published on his blog statements about Plaintiff based on the Monterey Herald's December 4, 2005 article. (SAC ¶ 26.) Plaintiff requested that Smith correct the statement, but Smith ignored Plaintiff, and printed only a minor retraction two months later. Id.

8. Knight Ridder, the Monterey Herald, and McClatchy Newspaper's Refusal to Report on Wrongs Done to Plaintiff

After the article of December 4, 2005, Knight Ridder and the Monterey Herald refused to comply

with Plaintiff's demands to publish information which, if known to the public, would establish that Plaintiff's claims of rampant public corruption were valid. (SAC ¶¶ 31-36.) For example, Knight Ridder did not publish that Plaintiff had defeated summary judgment motions made by his adversaries. (SAC ¶ 31.) The Monterey Herald did not publish that an employee of Monterey County obtained a temporary restraining order against Plaintiff based on his fear that Plaintiff was going to kidnap and assault him. Id.

In addition, McClatchy Newspapers was informed that the Monterey Herald refused to report on the wrongs done to Plaintiff. (SAC ¶ 7.) Despite such awareness, McClatchy continued in its negotiations to purchase the Monterey Herald. Id. It deliberately failed to report the wrongs done to Plaintiff in order to preserve the value of the Monterey Herald, which it later sold to MediaNews Group, Inc. Id.

9. Chief Justice Ronald George

California Chief Justice Ronald George failed to act on evidence of judicial corruption in Monterey County and performed various other actions detrimental to Plaintiff. (SAC ¶) Chief Justice George assigned judges to Plaintiff's pending cases. Id. He denied Plaintiff access to certain court documents, and changed the Judicial Appointments Commission Guidelines to prevent Plaintiff from obtaining a transcript of the nomination hearing of Judge Wendy Duffy. Id.

10. State and Monterey County Officials' Conspiracy to Obstruct Justice

Monterey Court Commissioner Richard Rutledge refused to disqualify himself, as required by law, from a case involving Plaintiff. (SAC ¶ 22.) On

May 16, 2005, Commissioner Rutledge set a trial date for May 23, 2005, and sent notice to Plaintiff's old address of record. Id. When Plaintiff failed to appear in court, Commissioner Rutledge entered default judgment against Plaintiff. Id. Commissioner Rutledge then directed Monterey County Chief Investigator Sue Stryker to remove a previously filed change of address notice from Plaintiff's case file. (SAC ¶ 16.) Commissioner Rutledge conspired with the various persons to accomplish the above wrongs, including Investigator Stryker, District Attorney Dean Flippo, and Assistant District Attorney Terry Spitz, and Judge Robert O'Farrell. (SAC ¶¶ 15, 16, 19.)

11. Monterey County Officials' Failure to Help Plaintiff Execute a Citizen's Arrest

Plaintiff contacted Monterey County Counsel Charles McKee about the wrongs done to him by Commissioner Rutledge, Investigator Stryker, District Attorney Dean Flippo, Assistant District Attorney Terry Spitz, and the Executive Committee of the Monterey Superior Court. (SAC ¶ 17.) McKee did not report these activities as requested by Plaintiff. Id. Plaintiff then wrote to McKee, explaining that Plaintiff was going to execute a citizen's arrest on him. Id. McKee obtained a temporary restraining order against Plaintiff. Id. When Plaintiff contacted Monterey County Sheriff Michael Kanalakis to help Plaintiff accomplish the citizen's arrest, Kanalakis did not respond. (SAC ¶ 18.) McKee and Kanalakis conspired together to defame Plaintiff and deprive him of his civil rights. Id.

12. James Burrus' Failure to Investigate Judicial Corruption

Acting Assistant Director, FBI Criminal Investigative Division, James Burrus actively ignored

the fact that agents in the FBI's Monterey County office failed to investigate Plaintiff's allegations of judicial corruption. (SAC ¶ 27.) Plaintiff contacted the FBI several times with additional information about corruption in Monterey County, but the FBI stopped accepting or returning Plaintiff's phone calls. Id.

13. James Burrus' Failure to Investigate Judicial Corruption

Acting Assistant Director, FBI Criminal Investigative Division, James Burrus, actively ignored the fact that agents in the FBI's Monterey County office failed to investigate Plaintiff's allegations of judicial corruption. (SAC ¶ 27.) Plaintiff contacted the FBI several times with additional information about corruption in Monterey County, but the FBI stopped accepting or returning Plaintiff's phone calls. Id.

On June 26, 2006, Plaintiff filed this Complaint, asserting claims against twenty-eight Defendants. For purposes of the present motions to dismiss, Defendants are divided into four categories: (1) the State Defendants, comprised of judicial and executive officials of the State of California;[2] (2) the Monterey County Defendants, comprised of executive officials

[2] Chief Justice Ronald George, Judge Lee Cooper, Judge Stephen Sillman, Judge Robert O'Farrell, Governor Arnold Schwarzenegger, Attorney General Bill Lockyer, the Office of the Attorney General, Deputy Attorney General Paul Hammerness, Deputy Tyler Pon, and Deputy James Schiavenza.

and employees of Monterey County;[3] 3) the News Media Defendants, comprised of media owners, publishers, and reporters;[4] and (4) James Burrus of the Federal Bureau of Investigation. The Second Amended Complaint does not enumerate separate cause of action or indicate clearly which causes of action are directed to which Defendants.[5] Presently before the Court are Defendants' motions to dismiss and Plaintiff's Motion to Permit Discovery. (hereafter, "Plaintiff's Motion," Docket Item No. 51.)

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[3] District Attorney Dean Flippo, Sheriff Michael Kanalakis, Charles McKee, District Attorney Terry Spitz, and Sue Stryker.

[4] Knight Ridder, Inc., The Monterey Herald, McClatchy Newspapers, Jayne Speizer, Royal Calkins, Virginia Hennessey, George Sanchez, Caroline Garcia, Gordon Yamate, Craig Smith, and Tony Ridder. With respect to Knight Ridder, Plaintiff claimed to have served this Defendant on February 29, 2007 (see Docket Item No. 129.) Even assuming that the service of process has been executed properly, service is untimely pursuant to Federal Rules of Civil Procedure Rule 4(m). Accordingly, this is additional ground for dismissal.

[5] Plaintiff requests the following relief: (1) award compensatory and punitive damage of $50 million; (2) award treble damages under California Civil Code section 52.1; (3) issue declaratory judgment that Plaintiff's civil rights were violated; (4) order the Monterey Herald to publish a front-page article about Plaintiff; (5) expunge the record of Plaintiff's criminal arrest for contempt; (6) remove Plaintiff's state lawsuits to federal court; and (7) convene a Federal Grand Jury to investigate his allegations of public corruption. (SAC) ¶¶ 38-39, 41-44.)

III. STANDARDS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed against a defendant for failure to state a claim upon which relief can be granted against that defendant. Dismissal may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1990); Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 533-534 (9th Cir. 1984). For purposes of evaluating a motion to dismiss, the court "must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party." Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987). Any existing ambiguities must be resolved in favor of the pleading. Walling v. Beverly Enters., 476 F.2d 393, 396 (9th Cir. 1973). However, mere conclusions couched in factual allegations are not sufficient to state a cause of action. Papasan v. Allain, 478 U.S. 265, 286 (1986); see also McGlinchy v. Shell Chem. Co., 845 F.2d 802, 810 (9th Cir. 1988).

A complaint should not be dismissed under Rule 12(b)(6) unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Moore v. City of Costa mesa, 886 F.2d 260, 262 (9th Cir. 1989). Courts may dismiss a case without leave to amend if the plaintiff is unable to cure the defect by amendment. Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000).

IV. DISCUSSION

As a preliminary matter, the Court's analysis relies solely on the four corners of the Complaint. Accordingly, the Court DENIES all motions for judicial notice.

A. State Defendants' Motion to Dismiss

1. State Judges

The State Defendants move to dismiss the Complaint against the state judges on the ground that Plaintiff's claims against state judges are barred by judicial immunity. (State Motion at 7-11.)

A judge is absolutely immune from civil suits arising out of the exercise of his judicial functions. Mireles v. Waco, 502 U.S. 9, 11-13 (1991); Pierson v. Ray, 386 U.S. 547, 554 (1967); Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986) (en blanc). In Pierson, the Supreme Court explained the doctrine as follows:

> Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction.... This immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.... His errors may be corrected on appeal, but he should not have to fear that unsatisfied

> litigants may hound him with litigation charging malice or corruption.

386 U.S. at 554 (internal quotations and citations omitted). The doctrine of absolute immunity applies unless the judge acts in the clear absence of jurisdiction. Stump v. Sparkman, 453 U.S. 349, 356-57 (1979); Schucker v. Rockwood, 846 F.2d 1202, 1203 (9th Cir. 1988). Judicial immunity applies to § 1983 claims. O'Neil v. City of Lake Oswego, 642 F.2d 367, 368 n.3 (9th Cir. 1981).

In this case, it is clear on the face of Plaintiff's Second Amended Complaint, that the judicial acts complained of—which include presiding over various state court proceedings and issuing related orders—fall well within the scope of each judge's respective function.

With respect to Plaintiff's contempt arrest, a motion to disqualify a judge under section 170.6 of the California Code of Civil Procedure does not deprive the judge of jurisdiction to hear a charge of direct contempt. Wenger v. Commission on Judicial Performance, 29 Cal. 3d 615, 626 (1981); Blodgett v. Superior Court, 210 Cal. 1, 12 1930). "Were the rule otherwise...the recalcitrant and offending party would need only to insult each judicial officer in turn until the list was exhausted, and thus, by making a farce of legal procedure, go scatheless and unpunished." Blodgett, 210 Cal. At 12 (quoting Lamberson v. Superior Court of Tulare County, 151 Cal. 458, 462 (1907). Here, Judge O'Farrell was not deprived of jurisdiction over the contempt proceeding by Plaintiff's disqualification motion, and is immune from suit for actions taken in that proceeding.

Accordingly, the Court grants the State

defendants' motion to dismiss the claims against state judges with prejudice.

2. State Executives

The State Defendants move to dismiss the Complaint against state executive Defendants on the ground that they are also immune from suit. (State Motion at 10-11.)

Absolute immunity extends to state executives when the alleged conduct is taken in connection with the judicial process. Fry v. Melarango, 939 f.2d 832, 836 (9th Cir. 1991). State prosecutors, for example, are immune from suits for damages allegedly caused by the initiation of prosecution or the presentation of the state's case. Flood v. Harrington, 532 F.2d 1248, 1251 (9th Cir. 1976) (citing Imbler v. Pachtman, 424 U.S. 409, 431 (1976). Plaintiff's claims against the remaining State Defendants relate to the filing of a motion to declare him a vexatious litigant. As alleged, this motion was brought as part of the relevant State Defendants' official conduct in representing Judge O'Farrell in Plaintiff's state suit against him. State Defendants are immune from suit on this basis.

Accordingly, the Court grants the State Defendants' motion to dismiss the claims against state executives with prejudice.

B. Monterey County Defendants' Motion to Dismiss

The Monterey County Defendants and the State Defendants both move to dismiss the Complaint on the ground that Plaintiff fails to allege a violation of a federal right sufficient to maintain a cause of action under 42 U.S.C. § 1983 because there can be no liability for conspiracy. See Pinaud v. County of Suffolk, 52 F.3d 1139, 1148 (2nd Cir. 1995) ("[W]hen the underlying activity at issue is covered by absolute

immunity, the plaintiff derives no benefit from alleging a conspiracy.")

With respect to the Monterey County Defendants, Plaintiff alleges that Monterey County Counsel McKee's failure to submit to Plaintiff's citizen's arrest and application for a restraining order, and Sheriff Kanalakis' failure to help Plaintiff perform the citizen's arrest, violated Plaintiff's "right to redress of grievances" and his right to keep and bear arms. (SAC ¶¶ 17-18; Opposition to Monterey County Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint with Prejudice at 3, hereafter "Opposition to Monterey County Motion," Docket Item No. 55.)

The First Amendment protects one's right to petition the government for redress of grievances. Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). The protections afforded by the Petition Clause have been limited by the Supreme Court to situations where an individual's associational or speech interests are also implicated. See WMX Technologies, Inc. v. Miller, 197 F.3d 367, 372-73 (9th Cir. 1999) (citing cases). In this case, as alleged, the conduct of the Monterey County Defendants in refusing Plaintiff's citizen's arrest does not implicate a First Amendment interest.

The Supreme Court has not determined whether the Second Amendment has been incorporated so as to apply to the states. See Hickman v. Block, 81 F.3d 98, 103 n.10 (9th Cir. 1996). The Second Amendment does not provide any type of individual right to own or possess weapons, and a private citizen lacks standing to assert a deprivation of the right to bear arms. Silveira v. Lockyer, 312 F.3d 1052, 1060 (9th Cir. 2002); Hickman, 81 F.3d at 101. Since the Second Amendment right "to keep and bear Arms" applies

only to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm. Stevens v. United States, 440 F.2d 144, 149 (6th Cir. 1971). In this case, there is no question that Plaintiff's lacks standing to assert a Second Amendment claim.

The Court GRANTS the Monterey County Defendants' motion to dismiss with prejudice.

C. **Agent James Burrus' Motion to Dismiss**

Plaintiff asserts claims against FBI Agent James Burrus ("Burrus") for (1) making false statements regarding matters submitted by Plaintiff to the FBI for investigation and (2) causing various FBI personnel to ignore Plaintiff. (SAC ¶ 27.)

Before considering the merits of Plaintiff's claims, the Court must first determine whether Burrus is a proper Defendant to the current action. See Fed. R. Civ. P. 12(h)(3); Kennedy v. United States Postal Serv., 145 F.3d 1077, 1078 (9th Cir. 1998). The Federal Tort Claims Act ("FTCA") authorizes claims against the United States, not private individuals. 28 U.S.C. § 2674; FDIC v. Craft, 157 F.3d 697, 706 (9th Cir. 1998); Kennedy, 145 F.3d at 1078. A limited exception exists under the FTCA, permitting suit against an employee of the federal government who violates a right guaranteed by the Constitution of the United States. 28 U.S.C. § 2679 (b)(2); Siegert v. Gilley, 500 U.S. 226 (1991).

Plaintiff has not alleged that Burrus violated Plaintiff's constitution rights. The Second Amended Complaint alleges facts which at most show negligence or misrepresentation; neither is sufficient to state a claim against a United States employee. Daniels v. Williams, 474 U.S. 327, 328 (1986); 28

U.S.C. § 2680(h); Owyhee Grazing Ass'n. Inc. v. Field, 637 F.2d 694, 697 (9th Cir. 1981).

The Court GRANTS the Federal Defendant's motion to dismiss with prejudice.[6]

E. News Media's Motion to Dismiss

Plaintiff's remaining claim is for defamation against the News Media Defendants. The News Media Defendants move to dismiss on the ground that California's anti-SLAPP statute bars this claim. (News Media Motion at 8-9.) Given the disposition of Plaintiff's federal claims, however, the Court first determines whether it has jurisdiction.

Supplemental jurisdiction over a pendent state law claim is appropriate where the relationship between federal and state claims form part of the same case or controversy. 28 U.S.C. § 1367(a). The claims must be transactionally related; that is, they must arise from a "common nucleus of operative fact" such that a plaintiff "would ordinarily be expected to try them all in a single judicial proceeding." United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966); City of Chi. v. Int'l College of Surgeons, 522 U.S. 156, 165 (1997) (Section 1367(a) codifies the principles established in Gibbs). "The district courts may decline to exercise supplemental jurisdiction over a claim...if...the district court has dismissed all claims

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[6] In addition, Plaintiff will be denied leave to amend his claim to add the United States as a defendant, since the United States has not waived sovereign immunity for tort claims based on misrepresentation and negligence. See 28 U.S.C. § 2680(h); Mount Homes, Inc. v. United States, 912 F.2d 352, 354 (9th Cir. 1990).

over which it has original jurisdiction." 28 U.S.C. § 1367(c). In determining whether to decline supplemental jurisdiction, the court is guided by the underlying principles of "judicial economy, convenience and fairness." Gibbs, 383 U.S. at 726.

The Court has dismissed all claims over which it had original jurisdiction. The Court declines to exercise supplemental jurisdiction over the remaining state law defamation claim. The Court DISMISSES Plaintiff's defamation claim without prejudice to refile in state court.

F. Leave to Amend

The only remaining issue is whether Plaintiff should be granted leave to amend with respect to any Defendants. For the reasons stated above, any amendment would unavailing. The crux of Plaintiff's Complaint is essentially a common law defamation claim. The Court declines to exercise jurisdiction over Plaintiff's state law claim. Accordingly, the Court will not grant leave to amend.

V. CONCLUSION

The Court GRANTS the State Defendants' Motion to Dismiss with prejudice; GRANTS the Monterey County Defendants'' Motion to Dismiss with prejudice; GRANTS Agent James Burrus' Motion to Dismiss with prejudice; and DISMISSES Plaintiff's common law claim for defamation against the News Media Defendants without prejudice to refile in state court.

The Court DENIES all other motions as moot.

The Clerk shall close this file.

Dated: April 26, 2007

JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: April 26, 2007

Richard W. Wieking, Clerk
By: /s/JW Chambers
Elizabeth Garcia
Courtroom Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Eugene Forte,

Plaintiffs,

v.

Knight Ridder, et al.,

Defendants.
_____/

NO. C 06-03948 JW

JUDGMENT

Pursuant to the Court's April 26, 2007 Order Granting Defendants' Motions to Dismiss,[1] judgment is entered in favor of:

(1) The State Defendants: Chief Justice Ronald George, Judge Lee Cooper, Judge Stephen Sillman, Judge Robert O'Farrell, Governor Arnold Schwarzenegger, Attorney General Bill Lockyer, the Office of the Attorney General,

[1] Specifically, the State Defendants' Motion to Dismiss with prejudice, the Monterey County Defendants' Motion to Dismiss with prejudice, and Agent James Burrus' of the Federal Bureau of Investigation Motion to Dismiss with prejudice.

Deputy Attorney General Paul Hammerness, Deputy Tyler Pon, and Deputy James Schiavenza.

(2) The Monterey County Defendants: District Attorney Dean Flippo, Sheriff Michael Kanalakis, Charles McKee, District Attorney Terry Spitz, and Sue Stryker.

(3) Agent James Burrus of the Federal Bureau of Investigation, and against Plaintiff Eugene Forte.

The Clerk shall close this file.

Dated: April 26, 2007

JAMES WARD
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: April 26, 2007 **Richard W. Wieking, Clerk**

By: /s/JW Chambers

Elizabeth Garcia
Courtroom Deputy

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENE FORTE,	No. 07-15983
Plaintiff – Appellant	D.C. No. CV-06-03948-JW
v.	MEMORANDUM*
KNIGHT RIDDER, INC.; et al.,	
Defendants – Appellees.	

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted December 17, 2008 **

Before: GOODWIN, WALLACE, AND RYMER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The panel unanimously finds this case suitable for decisions without oral argument. Fed. R. App. P. 34 (a)(2).

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34 (a)(2).

Eugene Forte appeals pro se from the district court's judgment dismissing for failure to state a claim his 42 U.S.C. § 1983 action, and dismissing without prejudice his various state law claims. Forte also appeals the district court's denial of leave to amend. We review de novo a dismissal for failure to state a claim. *Decker v. Advantage Fund Ltd.*, 362 F. 3rd 593-595-96 (9th Cir. 2004). We affirm.

The district court correctly determined that absolute quasi-judicial immunity bars Forte's claims against the Office of the Attorney General, Attorney General Bill Lockyer, Supervising Deputy Attorney General Paul Hammerness, Senior Assistant Attorney General James Schiavenza, and Supervising Deputy Attorney General Tyler Pon for actions taken within their authority. *See Fry v. Melarango, 939* F.2d 832, 836 (9th Cir. 1991). Quasi-judicial immunity also bars Forte's claims against Monterey District Attorneys Dean Flippo and Terry Spitz. *Id.* Forte's claims against FBI Agent James Burrus, Monterey County Sheriff Michael Kanalakis, Monterey County Counsel Charles McKee, and Monterey County Chief Investigator Sue Stryker were insufficient because, accepting his allegations as true, Forte does not allege facts showing that he was deprived of any constitutional right. *See Baker v. McCollan*, 443 U.S. 137, 140 (1979); *see also Owyhee Grazing Ass'n. Inc. v. Field*, 637 F.2d 694, 697 (9th Cir. 1981).

As to claims against numerous California state judges, the district court properly dismissed Forte's claims relating to actions undertaken in their judicial capacities on the ground that state court judges are entitled to absolute immunity for official actions. *See Harvey v. Waldron*, 210 F.3d 1008, 1012 (9th Cir. 2000); *see also* 42 U.S.C. §1983.

While it appears that some of Forte's claims

against certain government defendants may fall outside the scope of their immunity, liberally construing Forte's claims, Forte suggests no basis upon which he would be able to amend his complaint in order to cure the defects, and we see none. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENE FORTE,	No. 07-15983
Plaintiff – Appellant	D.C. No. CV-06-03948-JW
v.	ORDER
KNIGHT RIDDER, et al.,	
Defendants – Appellees.	

Before: GOODWIN, WALLACE, and RYMER, Circuit Judges.

The panel has voted to deny the appellant's motion for clarification.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. OP. 35.

The motion for clarification and the petition for rehearing en banc are denied.